ORIGINAL

No. 98-203

(3)

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

STATE OF NORTH CAROLINA,
Petitioner,

v.

RICHARD ALLEN JACKSON,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF NORTH CAROLINA

RESPONDENT JACKSON'S BRIEF IN OPPOSITION

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14pp

CAPITAL CASE

QUESTION PRESENTED

1. **Whether the North Carolina Supreme Court Correctly Applied this Court's Test for Determining Whether Incriminating Statements Were Elicited in the Course of Custodial Interrogation?**

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RESPONDENT JACKSON'S BRIEF IN OPPOSITION

Respondent Richard Allen Jackson respectfully opposes and requests that this Court deny the Petition for Writ of Certiorari filed by petitioner seeking review of the decision of the Supreme Court of North Carolina in *State v. Jackson*, 497 S.E.2d 409 (N.C. 1998).

OPINIONS BELOW

JURISDICTION

CONSTITUTIONAL AMENDMENTS AND STATUTES INVOLVED

Pursuant to Rules 15.2 and 24.2, these items are omitted since respondent is satisfied with petitioner's statements of the OPINIONS BELOW, JURISDICTION, and CONSTITUTIONAL AMENDMENTS AND STATUTORY PROVISIONS.

STATEMENT OF THE CASE

On the morning of December 20, 1994, Respondent Richard Allen Jackson was confronted at work in front of customers and co-workers by two detectives from the Sheriff's Department of Buncombe County, North Carolina. (Tpp. 266-68) Respondent was told that he was not under arrest, but he was asked to leave his workplace to accompany the detectives for questioning regarding the death of Karen Styles. (Tp. 268) Respondent explained to a fellow employee that he would be back to work soon, and was escorted to the detectives' unmarked police car. (Tpp. 264-269) Before allowing Respondent to enter the car, the detectives determined that he carried no "weapons or pocket knife of any type." (Tp. 270)

Once Respondent was alone with the detectives in their vehicle, they told him that he was a suspect in the case. Respondent said he had nothing to do with it. (Tpp. 272-73) One detective commented that he enjoyed hunting in the Bent Creek recreation area in which Ms. Styles' body was discovered, and asked Respondent whether he did any hunting. Respondent had already denied knowing the recreation

area, and stated that he had not owned a gun for two years. (Tpp. 273-74) The detectives had evidence connecting Respondent to the Bent Creek area, and to the purchase of a .22 caliber rifle and ammunition at a Kmart three days before Ms. Styles' death. (Tpp. 56, 175) The cause of death had been determined to be a small caliber rifle wound to the head. (Tp. 574)

On arriving at the Sheriff's Department, Respondent was ushered to a small basement room filled with a large table and several chairs. The only visual access out of the room was through a single window looking out through blinds onto an interior hallway. The detectives began the interrogation a few minutes after 11:00 a.m., and kept Respondent under constant supervision throughout the several hours of questioning that followed. (Tpp. 274-75, 310)

Within ten minutes, Respondent had cooperated by signing a waiver of his *Miranda* rights. He had also agreed to provide evidence for the case by being photographed and physically searched, and by providing not only prints from his fingers and palms but also samples of his blood and saliva, along with hair from his head, armpits, chest, forearms, pubic area, and legs. In addition, he consented to the search of his home, which he shared with his wife and two young children. (Tpp. 276-80, 320, 487) Having signed these consent and waiver forms, Respondent was waiting to provide the evidence requested when he was again told that he was not under arrest. Respondent stated that he wanted to cooperate in order to get back to work. (Tp. 282)

During questioning, Respondent revealed that he had a history of mental breakdowns and suicide attempts. He stated that he had been shuttled between eight different foster homes as a child and suffered abuse in one of them. He explained that he spent two months in a mental hospital during high school, and that upon graduation he had joined the Navy, only to be discharged after six months with a recommendation that he see a psychiatrist. He described himself as frequently depressed, and as "just collaps[ing] under pressure." (Tpp. 202-03)

Following this exchange, Respondent provided the physical evidence as requested. He had then been under officers' supervision for nearly three hours. (Tpp. 206-08) At this point, Sheriff Bobby Medford entered the interview room and demanded, "What did you do with the rifle that Karen Styles was shot with?" Respondent said, "I think I need a lawyer present." A detective participating in the questioning recorded in his notes, "2:04 p.m., on 12-20-94, wants a lawyer present." (Tp. 338) The Sheriff stated that Respondent did not have to answer any more questions, but added, "Son, I know you bought the rifle and the duct tape at Kmart on the 28th of October. I know that you were in Bent Creek on the day she was killed and that's fine, but you need help." Respondent then broke down crying, repeating that he "didn't mean to kill her." (Tpp. 209-10)

The detective in charge of the investigation then consulted with the District Attorney, stating that Respondent had requested a lawyer, but that he was not "under arrest." The detective returned to the interview room and obtained a second waiver of *Miranda* rights from Respondent. (Tp. 212) Respondent then confessed to the

kidnapping, rape, and killing of Karen Styles. (Tpp. 214-15) There was "not one shred" of physical evidence connecting Respondent with the crime scene. (Tpp. 544-45) Nor was the FBI able to connect the .22 rifle in question with the killing; the crime lab was not even able to identify the origin of the metal fragments in the victim's head. (Tpp. 533-37).

Charged with first degree kidnapping, rape, and murder, Respondent pleaded not guilty. The trial court denied Respondent's pretrial motion to suppress the confession. Respondent was convicted on all counts and sentenced to death for the murder conviction. On direct appeal of that conviction and sentence, the North Carolina Supreme Court ordered a new trial, holding that the denial of Respondent's motion to suppress violated his Fifth and Fourteenth Amendment rights protected by *Edwards v. Arizona*, 451 U.S. 477, 68 L.Ed.2d 378 (1981) and *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed.2d 694 (1966). *State v. Jackson*, 497 S.E.2d 409 (N.C. 1998).

REASONS WHY A WRIT SHOULD NOT ISSUE

I. THE NORTH CAROLINA SUPREME COURT PROPERLY APPLIED THIS COURT'S PRECEDENTS IN HOLDING THAT RESPONDENT'S INCRIMINATING STATEMENTS WERE ELICITED DURING A CUSTODIAL INTERROGATION.

The State accuses a unanimous panel of the North Carolina Supreme Court of confusing the Fourth and Fifth Amendments in determining that the trial court violated Respondent's constitutional rights by denying his pretrial motion to suppress incriminating statements obtained during a custodial interrogation. The State's

contention is disingenuous. Based on a misleading representation of the relevant case law, the argument creates a false distinction between the standard analysis employed in the decision below and what the State denominates the "indicia of arrest" test. The distinction collapses under scrutiny. Because the North Carolina Supreme Court correctly understood and applied the law established by this Court to govern custodial interrogations, the State's petition for review should be denied.

The pattern of analysis established by this Court and applied in the decision below is straightforward. The first principle is that

> [i]f at any time during an interrogation of a person in custody the person invokes his right to counsel, the interrogation must cease, and it cannot be resumed without an attorney being present unless the defendant initiates a further discussion with the officers.

Jackson, 497 S.E.2d *at 411* (*citing Edwards*, 451 U.S. 477, and *Miranda*, 384 U.S. 436).

The second principle is that "[a] suspect is in custody when, considering the totality of circumstances, a reasonable person in the suspect's position would not feel free to leave." *Jackson,* 497 S.E.2d *at 411* (*see Miranda*, 384 U.S. at 444) (Fifth Amendment analysis begins when an individual is "taken into custody or otherwise *deprived of his freedom of action* in any significant way") (emphasis added); *Thompson v. Keohane*, 516 U.S. 99, 133 L. Ed. 2d 383, 394 (1995) (issue is "would a reasonable person have felt he or she was not *at liberty to terminate the interrogation and leave*) (emphasis added); *Stansbury v. California*, 511 U.S. 318, ___, 128 L.Ed.2d 293, 300 (1994) (*per curiam*) (issue is "how a reasonable person in that position would perceive

his or her *freedom to leave*") (emphasis added); *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984) (relevant question is "how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her "*'freedom of action'*") (emphasis added);*California v. Beheler*, 463 U.S. 1121, 1125 (1983) (*per curiam*) ("the ultimate inquiry is simply whether there is a "formal arrest or *restraint on freedom of movement*" of the degree associated with a formal arrest.") (emphasis added) (*citing Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (*per curiam*) (assessing whether "the questioning took place in a context where respondent's *freedom to depart* was restricted in any way") (emphasis added)).

The final rule governing analysis of custodial interrogations is that the "test is necessarily an objective one to be applied on a case-by-case basis considering all the facts and circumstances." *Jackson*, 497 S.E.2d at 411 (*see Stansbury*, 511 U.S. at ___, 128 L.Ed.2d at 300). Applying that rule, the panel concluded unanimously that Respondent "was in custody" when he requested that an attorney be present:

> [At] the request of two deputy sheriffs, the defendant accompanied them to the sheriff's office. While at the sheriff's office, the defendant consented to fingerprinting and gave blood and hair samples. He was under constant supervision. The defendant had told the officers he was anxious to return to work, and despite answering all questions from them and telling them he had no knowledge of the crime, he was never told that he was free to leave or that he would be given a ride to his home or place of work if he decided to leave.
>
> After being in the interrogation room for a period of approximately three hours, during which time he was questioned by the officers in regard to the murder, had hair and blood samples taken, and was fingerprinted, a reasonable man at the least would have wondered whether he was free to leave. When the sheriff asked him what he had done with the rifle he had used to kill the victim, this informed the defendant that the sheriff thought he had committed murder. A

> reasonable man in the defendant's position who had been interrogated for approximately three hours and thought the sheriff believed he had committed murder would not have thought he was free to leave. He would have thought the sheriff intended to hold him for prosecution for murder.

Jackson, 497 S.E.2d at 411.

This straightforward application of the governing law demonstrates that the State has labored mightily to create confusion where none exists; the accusation that the North Carolina Supreme Court does not grasp the distinction between Fourth and Fifth Amendment analyses is clearly false. (Pet. Br. at 15)[1] While the State seeks to muddy the waters by inventing competing names for the test ("free to leave" *versus* "indicia of arrest"), the North Carolina Supreme Court has focused consistently on the question articulated by this Court: whether a reasonable person under the circumstances would consider himself to have his freedom of action deprived in any significant way. However denominated, the freedom to "leave," *Thompson,* 516 U.S. at ___, 133 L.Ed.2d at 394; *Stansbury*, 511 U.S. at ___, 128 L.Ed.2d at 300, the freedom "to depart," *Mathiason*, 429 U.S. at 495, or the "freedom of movement," *Beheler*, 463 U.S. at 1125, is essential to a citizen's "freedom of action." Deprivation of this essential freedom is, equally obviously, "significant"; indeed, it is difficult to conceive of anything more "indic[ative] of formal arrest" than such a deprivation. (Pet.

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[1] It is true that *State v. Medlin*, 426 S.E.2d 402 (N.C. 1993) cites several cases which in turn cite several cases involving the Fourth Amendment. For example, following a detailed review and rejection of defendant's Fifth Amendment claim in *State v. Davis*, 290 S.E.2d 574, 579-585 (N.C. 1982), the opinion briefly referenced this Court's Fourth Amendment ruling in *United States v. Mendenhall*, 446 U.S 544 (1980). As the *Davis* opinion makes clear, however, the Fourth Amendment analysis was undertaken only out of an abundance of caution to address an issue "not squarely presented by an assignment of error" but implicit therein. *Davis*, 290 S.E.2d at 585.

Br. at 14; *compare Black's Law Dictionary* (to "arrest" is "to deprive a person of his liberty by legal authority. Taking...custody of another for the purpose of holding or detaining him....")).

The State has mischaracterized a handful of courts as having "ignored or misunderstood" this Court's Fifth Amendment jurisprudence. (Pet. Br. at 21-23) Cursory analysis of the decisions cited reveals that each adheres as faithfully to the straightforward principles articulated by this Court as did the unanimous panel addressing Respondent's claim. The State's mischaracterization rests, like its petition, on its construction of a distinction without a difference. As this Court made clear recently in *Thompson*, 516 U.S. at ___, 133 L.Ed.2d at 394, the "freedom to leave" test and the "indicia of formal arrest" tests are one and the same:

> [For t]he ultimate "in custody" determination for *Miranda* purposes...[t]wo discrete inquiries are essential...: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, *would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave*. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve "the ultimate inquiry": *"[was] there a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest."*

(emphasis added).

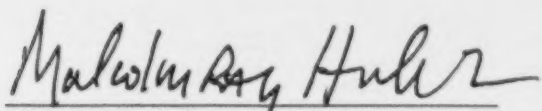
Here, the North Carolina Supreme Court concluded that under all the circumstances of the case a reasonable person in Respondent's position "would not have thought he was free to leave[,]" because "[h]e would have thought the sheriff intended to hold him for prosecution for murder." *Jackson*, 497 S.E.2d at 411. Thus,

the State's attempted distinction between the "free to leave" and "indicia of arrest" tests warrants no further scrutiny and its petition for review should be denied.

CONCLUSION

To review the unanimous decision below on the basis of the State's attempt at wordplay would be a genuine "travesty of justice." (*Compare* Pet. Br. at 24) Respondent respectfully requests that this Court deny the State's Petition.

Respectfully submitted, this the ___ day of August, 1998.



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